

AMENDED IN ASSEMBLY APRIL 14, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 620

Introduced by Assembly Member Negrete McLeod

February 17, 2005

An act to amend Sections 1335, 1336, 1337, ~~1339~~, and 1341 of the Penal Code, relating to criminal proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 620, as amended, Negrete McLeod. Criminal proceedings: examination of witnesses.

Existing law provides for the conditional examination of a witness by the defendant in all cases and by the people in cases where the punishment may be other than death. Existing law further provides that when the defendant has been charged with a serious felony, as defined, the people may have a witness examined conditionally if the people have evidence the life of the witness is in jeopardy.

~~This bill would eliminate the provisions that specifically authorizes conditional examinations in cases where the defendant has been charged with a serious felony and the life of the witness is in jeopardy.~~

This bill would permit the people or the defendant, when the defendant is charged with a serious felony, to have a witness examined conditionally if there is evidence that the life of the witness is in jeopardy.

Existing law provides that the defendant or the people may apply for an order that the witness be examined conditionally when the material witness is about to leave the state, or is so sick as to afford reasonable grounds he or she will be unable to attend the trial, or is a person 70 years of age or older, or a dependent adult. Further, existing law provides the people may apply for the conditional examination of a

prosecution witness when ~~there is~~ *the people* have evidence that the witness' life is in jeopardy.

This bill would lower the age at which a conditional examination application for a material witness may be made to 65 years of age or older. *This bill would permit a conditional examination to be sought by either the people or the defendant when there is evidence a witness, not just a prosecution witness, is in jeopardy.*

Existing law outlines specified information that must be provided upon an affidavit when applying for a conditional examination, including the nature of the offense, the state of the proceedings in the action, witness information, and the specified grounds that make the conditional examination necessary.

~~This bill would specify that when a conditional examination is requested based on the belief that the life of a witness is in jeopardy, it must be the life of a prosecution witness that is in jeopardy.~~

~~Existing law directs that an order for an examination must be made by the court if it is satisfied that examination of the witness is necessary.~~

~~This bill would direct that an order for an examination must be made by the court if it is satisfied that the testimony of the witness is material to the defense or prosecution of the action and the grounds stated in the application are true.~~

Existing law prohibits a conditional examination unless the reasons for the exam, as provided for in statute, are shown to the satisfaction of the magistrate.

This bill would make other conforming changes to reduce the witness age to 65, from 70, for purposes of granting a request for a conditional examination.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1335 of the Penal Code is amended to
2 read:

3 1335. (a) When a defendant has been charged with a public
4 offense triable in any court, he or she in all cases, and the people
5 in cases other than those for which the punishment may be death,
6 may, if the defendant has been fully informed of his or her right
7 to counsel as provided by law, have witnesses examined

1 conditionally in his or her or their behalf, as prescribed in this
2 chapter.

3 *(b) When a defendant has been charged with a serious felony,*
4 *the people or the defendant may, if the defendant has been fully*
5 *informed of his or her right to counsel as provided by law, have*
6 *a witness examined conditionally as prescribed in this chapter, if*
7 *there is evidence that the life of the witness is in jeopardy.*

8 *(c) As used in this section, “serious felony” means any of the*
9 *felonies listed in subdivision (c) of Section 1192.7 or any*
10 *violation of Section 11351, 11352, 11378, or 11379 of the Health*
11 *and Safety Code.*

12 SEC. 2. Section 1336 of the Penal Code is amended to read:

13 1336. (a) When a material witness for the defendant, or for
14 the people, is about to leave the state, or is so sick or infirm as to
15 afford reasonable grounds for apprehension that he or she will be
16 unable to attend the trial, or is a person 65 years of age or older,
17 or a dependent adult, the defendant or the people may apply for
18 an order that the witness be examined conditionally.

19 ~~(b) When the people have~~ *there is evidence that the life of a*
20 ~~prosecution~~ *witness is in jeopardy, the defendant or the people*
21 *may apply for an order that the witness be examined*
22 *conditionally.*

23 (c) As used in this section, “dependent adult” means any
24 person who is between the ages of 18 and 70, who has physical
25 or mental limitations which restrict his or her ability to carry out
26 normal activities or to protect his or her rights, including but not
27 limited to, persons who have physical or developmental
28 disabilities or whose physical or mental abilities have diminished
29 because of age. “Dependent adult” includes any person between
30 the ages of 18 and 70 who is admitted as an inpatient to a
31 24-hour facility, as defined in Sections 1250, 1250.2, and 1250.3
32 of the Health and Safety Code.

33 SEC. 3. Section 1337 of the Penal Code is amended to read:

34 1337. The application shall be made upon affidavit stating all
35 of the following:

- 36 (1) The nature of the offense charged.
37 (2) The state of the proceedings in the action.
38 (3) The name and residence of the witness, and that his or her
39 testimony is material to the defense or the prosecution of the
40 action.

1 (4) That the witness is about to leave the state, or is so sick or
2 infirm as to afford reasonable grounds for apprehending that he
3 or she will not be able to attend the trial, or is a person 65 years
4 of age or older, or a dependent adult, or that the life of the
5 prosecution witness is in jeopardy.

6 ~~SEC. 4. Section 1339 of the Penal Code is amended to read:~~

7 ~~1339. If the court or judge is satisfied that the testimony of~~
8 ~~the witness is material to the defense or the prosecution of the~~
9 ~~action and that the grounds stated in the application are true, an~~
10 ~~order must be made that the witness be examined conditionally,~~
11 ~~at a specified time and place, and before a magistrate designated~~
12 ~~therein.~~

13 ~~SEC. 5.~~

14 *SEC. 4.* Section 1341 of the Penal Code is amended to read:

15 1341. If, at the time and place so designated, it is shown to
16 the satisfaction of the magistrate that the witness is not about to
17 leave the state, or is not sick or infirm, or is not a person 65 years
18 of age or older, or a dependent adult, or that the life of the
19 prosecution witness is not in jeopardy, or that the application was
20 made to avoid the examination of the witness at the trial, the
21 examination cannot take place.